IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

PETN,UNDER ARBITRATION ACT. No 18 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TECHNO FABRICS

Versus

KANDLA PORT TRUST

Appearance:

1. PETN,UNDER ARBITRATION ACT. No. 18 of 2001
MR BHARAT T RAO for Petitioner No. 1
MR SR BRAHMBHATT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI

Date of decision: 05/03/2004

ORAL JUDGEMENT

1. Heard Mr. B.T. Rao, learned advocate for the petitioner and Mr. Brahmbhatt, learned advocate, who

appeared on behalf of the respondent Kandla Port Trust. In this petition, the Court has issued notice admitting the petition on 23rd March, 2001 and the notice was made made returnable on 20th April, 2001, the matter remained pending till date and as found from the docket sheet, though the matter was appeared earlier, for one reason or others, the matter was adjourned from time to time.

2. When the learned Chief Justice has nominated me to consider the application under the Arbitration and Conciliation Act and when the matter was placed before me on 27.2.2004, again a request was made by Mr. Brahmbhatt for the respondent for seeking an adjournment and accordingly, I had passed the following order while granting adjournment, which reads as under :-

> "A joint request is made, for which I was reluctant to accede to the request for adjournment in view of the fact that this Petition is filed in January 2001 and petition is adjourned for number of occasions for about 61 times. Mr. Brahmbhatt however is hopeful that he will get the information in respect of the name of the Arbitrator to be nominated from his client and the matter may be adjourned to 5.3.2004. In view of this request of Mr. Brahmbhatt to give last chance matter is adjourned by consent to 5.3.2004. In no case motion for adjournment will be entertained."

Accordingly, matter was listed for hearing today and again a request is made by Mr. Brahmbhatt for adjournment as he has received instruction from Chief Mechanical Engineer, Kandla that they have already referred the matter for suggesting the name of Arbitrator at Bombay Port Trust Authority and as he has not received the name of the Arbitrator to be nominated in the matter, his request is that the matter be adjourned till the Bombay Port Trust Authority decide the matter. In view of the order, which I have passed and reproduced hereinabove, the request made by Mr. Brahmbhatt is not reasonable and more particularly, on the ground for seeking adjournment by Mr. Brahmbhatt as according to him, this is not a fresh matter for which, the respondent authority is required to refer the subject for consideration before the Bombay Port Trust Authority. In view of the fact that the petition is admitted in view of the order passed as back as on 23rd March, 2001 and for number of occasions the request of Mr. Brahmbhatt was entertained, accordingly, the request for adjournment is rejected.

3. During hearing Mr. Rao has taken me through the petition and the documents attached thereto including the correspondence and the agreement arrived at between the parties and reply affidavit filed by Shri Murlidhra Motiram Jaswani, Additional Chief Mechanical Engineer of Kandla Port Trust dated 9th November, 2001 with the documents attached thereto in his affidavit and the rejoinder affidavit filed by Shri Rao dated 22.8.2002.

4. This petition is filed under Section 11 of the Arbitration and Conciliation Act, 1996 for seeking appointment of Arbitrator in respect of the dispute arises between the parties. This petition is supported with an affidavit of Shri Rao dated 17th March, 2001. As per agreement, the petitioner has placed reliance upon the Clause 25, which reflect the settlement of dispute by arbitration. It transpires from the documents that before filing this petition, the petitioner had also issued legal notice to the respondent by relying upon the Arbitration Clause and requested the respondents for appointment of an arbitrator to resolve the dispute arises from the agreement between the parties. Mr. Rao has accordingly, while taking me through the petition and documents attached thereto, has submitted that in spite of issuance of notice to the respondent for appointment of arbitrator, the respondent had not acted and accordingly, he had to move this court for seeking appointment of arbitrator as contemplated under the Arbitration and Conciliation Act, 1996 and though, the time was granted from time to time for suggesting the name of arbitrator, the respondent Kandla Port Trust has not taken any steps for nominating the arbitrator. Looking to the dispute in respect of claim and relying upon the arbitration clause, the petitioner has approached this court under Section 11 of the Act and prayed that a suitable person can appoint as a Sole Arbitrator to decide the dispute between the parties due to non-settlement and non payment of the claim put forward by the petitioner in his letter dated 4.2.2000. Mr. Rao has also submitted that as the petitioner has prayed for appointment of arbitrator and as informed by his client that Justice N.B. Patel, Retired Judge of this Court be appointed as an Arbitrator to resolve the dispute between the parties and according to him that even he has also ascertained from Justice N.B. Patel, who had given his consent to act as sole arbitrator and accordingly, Mr. Rao has submitted that appointment be made accordingly.

5. Mr. Brahmbhatt, learned advocate on behalf of

the respondent has vehemently urged and opposed the petition by taking me through the reply affidavit filed by respondent and he accordingly, prayed that no case is made out by the petitioner for which I am require to make an appointment of an Arbitrator, as prayed by the petitioner in this petition and accordingly, he requests for rejecting the petition.

6. It is undisputed that agreement was arrived at between the parties and in which, there is an agreement clause of arbitration.

7. Considering this back ground and in view of the decision of the Apex Court, wherein, at the time of appointment of Arbitrator, I am not require to deal with the contentions raised by the parties in the petition on merit, as it will be open for the parties to take all contentions before the Arbitrator and the Arbitrator is required to deal with such contentions. Accordingly, without expressing anything on the merits and as contented by the counsel appearing in the matter and without expressing anything on the reply affidavit filed in this proceedings, the question, which I am required to decide is whether there is any Arbitration Clause between the parties or not, for which, the dispute can be resolved by appointing arbitrator. So far as agrement and the arbitration clause is concerned, the same is very much there, for which petitioner has placed reliance by seeking appointment of arbitrator. It is not in dispute that there is an arbitration clause in an agreement, which was executed and signed between the parties.

8. Considering this back ground and the fact that petition is pending since March, 2001 and the ground for which the adjournment was sought for, for getting the name of an arbitrator to be nominated to resolve the dispute between the parties and as observed earlier, the respondent authority had referred the matter before the Bombay Port Trust Authority for suggesting the name of an arbitrator and till date no steps were taken for suggesting the name of an Arbitrator. Considering this back ground and without expressing anything on the merit of the contentions raised in the matter in this proceeding, I am of the view that there is an Arbitration Clause and the petitioner has accordingly, before initiating this proceedings, had given legal notice for appointment of arbitrator to resolve the dispute between them and it is only thereafter, the petitioner has approached this court. It is of no use to wait further in an old matter and sufficient opportunity was given to Mr. Brahmbhatt, who appeared for the respondent,

accordingly, I am of the view that petitioner has made out a case for appointment of sole arbitrator. Accordingly, while disposing of this petition, I appoint Justice N.B. Patel, Retired Judge of this Court as a Sole Arbitrator to resolve the dispute between the parties and it will be open for the respondent to raise all the contentions on merit as highlighted in reply affidavit and the contentions raised by the parties will be examined by the Arbitrator in accordance with law. Office is accordingly directed to take steps in the matter. Petition is allowed. Rule is made absolute with no costs.

(D.K. Trivedi, J.)

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